(2) Supreme Court, U.S.
FILED

03 No. 19 JUL 18 2003

In the
Supreme Court of the United States

Marilyn I. Ellman

Petitioner,

vs.

Woodstock School District #200

Respondent,

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit
Chicago, Illinois

APPENDIX FOR WRIT OF CERTIORARI

Marilyn I. Ellman, Pro Se
P.O. Box 408
Woodstock, IL. 60098
(262) 248-2801

50 pp

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Appendix A

United States Court of Appeals;
For the Seventh Circuit
Chicago, Illinois 60604

JMGMENT- WITHOUT ORAL ARGUMENT

Date: March 5, 2003

BEFORE:
Honorable RICHARD A. POSNER, Circuit Judge

Honorable DANIEL A. MANION, Circuit Judge

Honorable ANN CLAIRE WILLIAMS, Circuit Judge

Nos. 01-1779 & 01-3777

MARILYN I. ELLMAN, Plaintiff - Appellant

v.

WOODSTOCK #200 SCHOOL DISTRICT,
Defendant - Appellee

Appeals from the United States District Court for the Northern District of Illinois, Western Division No. 99 C 50017, Philip G. Reinhard, Judge

The judgment of the District Court is AFFIRMED, with costs. Woodstock's motion to strike the new

arguments and the documents, which Ellman provides in her reply brief for the second appeal (01-3777), that are not part of the record is GRANTED. We order Ellman to show cause within 14 days why we should not impose sanctions against her filing these frivolous appeals. Within that time, Woodstock should subM4 t a statement of its costs and fees for these appeals. The above is in accordance with the decision of this court entered on this date.

(1060-110393)

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 18, 2003*
Decided March 5, 2003

Before

Hon. RICHARD A. POSNER, Circuit *Judge*

Hon- DANIEL A. MANION, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS., Circuit *Judge*

Appendix A; continuing

Nos. 01-1779 & 01-3777

MARILYN 1. ELLMAN,
Plaintiff-Appellant,
v.

WOODSTOCK #200 SCHOOL DISTRICT,

Defendant-Appellee

Marilyn Ellman, a school psychologist, sued her employer, Woodstock #200 School District, raising a variety of claims under Title VII and Illinois law. The essence of these claims was Ellman's belief that Woodstock was discriminating against her because of her age and gender- The district court granted summary judgment for Woodstock, and the court subsequently granted in part Woodstock's request for costs and attorneys' fees- Ellman appeals the district court's grant of summary judgment (this is No. 01-1779) and award of costs and fees (this is 01-1777), and in both appeals we affirm.

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fd. R - App. P- 34(a)(2).

Appendix A; Continuing

Nos- 01-1779 & 01-3777

In February 2000 Ellman filed her third amended complaint in this case. She alleged that Woodstock assigned her to a storage area without windows for an office and to a substandard classroom; required her to work overtime without pay; threatened her with unwarranted discipline and negative performance evaluations; and twice did not inform her when school was canceled due to inclement weather. She raised a number of claims under Illinois law and Title VII, and both parties moved for summary judgment.

In ruling on the summary-judgment motions, the district court noted that Ellman 's filings suffered from a number of deficiencies. With respect to Woodstock's motion, Ellman failed to respond to Woodstock's statement of facts, much less respond to each numbered paragraph with citations to the record, as was her obligation under Local Rule 56. 1. This was the case even after Woodstock informed her by letter of her failure to comply with Rule 56.1 and she moved for and was given an extension by the court to correct this deficiency. With respect to her own motion for summary judgment, Ellman 's statement of material facts failed to include required citations to the record and was replete with legal arguments and legal conclusions. The affidavit she filed with her motion likewise contained numerous statements that were speculative or not based on personal knowledge. In addition, months after filing her motion and affidavit, she

filed without the court's permission a "Supplementary Affidavit" and "Second Supplementary Affidavit," each containing numerous attachments. Based on these deficiencies, the district court accepted Woodstock's unresponded-to statement of facts as true and struck those portions of Ellman 's statement of facts and affidavit that contained legal arguments, conclusions, speculation, or did not have support in the record. The court also struck her untimely supplemental filings as "a complete derogation of the rules."

Turning to the merits, the court denied Ellman 's motion based on a "complete lack of evidence-" The court granted Woodstock's motion, concluding that Ellman (1) was collaterally estopped (issue preclusion) from bringing claims based on overtime pay and previous performance evaluations because she already had litigated unsuccessfully the issues underlying those claims, *see Ellman v- Hentges,* 165 F.3d 31 (7th Cir- 1998) (unpublished order); (2) was barred from bringing her **claim under** the **Illinois Human** Rights Act for failure to exhaust administrative remedies; and (3) failed to make out a prima facie discrimination case because she had not shown that she suffered an adverse employment action.

After Ellman appealed this decision, Woodstock moved for costs and attorneys' fees, *see* Fed- R. Civ. P_ 54, which the district court granted in part-awarding costs and fees only for issues that Ellman had litigated previously and therefore should have known were frivolous ($254.70 in costs and $925 in fees)

On appeal Ellman challenges an array of procedural rulings, including the district court's decision to strike portions of her statement of facts' and affidavit, to

accept Woodstock's statement of facts after Ellman failed to respond to it, and not to accept her untimely filings. She maintains that these rulings were improperly based on "technical non-compliance," which should have been overlooked because she is a pro se litigant.

While we do construe pro se filings liberally, even pro se litigants must follow procedural rules and district courts have discretion to enforce those rules. *Metro. Life Ins. Co. v. Johnson,* 297 F-3d 558, 562 (7th Cir. 2002); Greer v. Bd. of Educ. of Chicago, 267 F.3d 723, 727 (7th Cir. 2001). The requirements for pro se litigants in responding to summary-judgment motions are "not onerous," Waldridge v. Am. *Hoechst* Corp., 24 F.3d 918, 920 (7th Cir. 1994), and we disagree that Ellman 's deficiencies were mere technicalities. Employment- discrimination cases are "extremely fact-intensive"-the district court was not required to make up for Ellman 's failure to respond to Woodstock's statement of facts by hunting through her mass of filings to search for disputed factual issues. *See* Greer, 267 F.3d at 727. Moreover, the district court's decision to strike only the portions of her filings that were conclusory, speculative, or not based on personal knowledge did not prejudice Ellman because those portions would not have helped her motion for summary judgment anyway. *See* Fed. R. Civ. P. 56(e). Ellman does not explain how her case differs from the many in which we "have consistently and repeatedly upheld a district

court's discretion to require strict compliance with its local rules governing summary judgment." Bordelon v. Chicago Sch*Reform Bd. of Trs.*, 233 F.3d 524, 527 (7th Cir. 2000). Nor do we see any difference. The district court did not abuse its discretion in how it dealt with Ellman's procedural deficiencies.

Ellman also challenges the award of costs and attorneys' fees on the ground that Woodstock's motion was untimely. She points out that Federal Rule 54(d)(2)(B) states that a motion for costs "must be served or filed no later than 14 days after entry of judgment" and Woodstock filed its motion on May 25, 2001 (88 days after the district court's judgment)- The 14-day requirement of Rule 54(d)(2)(B), however, is preceded by a proviso-namely, that the timing and other listed requirements do not apply if "otherwise provided by statute or order of the court." Local Rule 54-3 extends the timing requirement to 90 days. We have already determined that local rules are orders of the court for purposes of Federal Rule 54(d)(2)(b), and thus valid modifications of the 14-day requirement. *Johnson v. Lafayette Fire Fighters Assoc-Local* 472, 51 F.3d 726, 730 (7th Cir. 1995). Because Woodstock's motion was filed within 90 days, it was timely.

The district court's judgment and award of costs and fees are AFFIRMED. Woodstock's motion to strike the new arguments and the documents, which Ellman provides in her reply brief for the second appeal (01-3777), that are not part of the record is GRANTED. We order Ellman to show cause within 14 days why we should not impose sanctions against her for filing these frivolous appeals- Within that time, Woodstock should submit a statement of its costs and fees for these appeals.

Appendix B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 13, 2003

Before:

Hon. Richard A. Posner, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

Hon. Ann Claire Williams, *Circuit Judge*

Nos. 01-1779 & 01-3777
Marilyn 1. Ellman,

Plaintiff-Appellant,

v.

Woodstock #200 School District,

Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Western Division.
Plaintiff-Appellant,

No. 99 C 50017 **Philip G. Reinhard,** Judge

Appendix B; Continuing

ORDER

On March 28, 2003 appellant filed a motion to vacate the order granting sanctions, issued by this court on March 5, 2003. That motion is hereby DENIED.

On consideration of the petition for rehearing en banc filed by plaintiff-appellant on April 10, 2003, no judge in active service has requested a vote on the petition for rehearing *en bane,* and all of the judges on the original panel have voted to deny rehearing. The petition is therefore DENIED.

Appendix C:

United States District Court, Northern District of Illinois

Name of Assigned Judge: Philip G. Reinhard

CASE NUMBER 99 C 50017

DATE: 2/26/2001

ELLMAN vs. WOODSTOCK #200 SCHOOL DISTRICT

DOCKETENTRY:

(10) For the reasons stated in the attached Memorandum Opinion and Order, the school district's motion to strike is granted in part and denied in Part. Ellman's Rule 56 motion for summary judgment is denied. The school district's Rule 56 motion for summary judgment is granted. This cause is hereby dismissed in its entirety.

"s/ Philip G. Reinhard".

Appendix C; Continuing

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

MARILYN I. ELLMAN,

Plaintiff,

v.

WOODSTOCK #200 SCHOOL DISTRICT,

Defendant.

No. 99 C 50017

MEMORANDUM OPINION AND ORDER

I. Introduction

Plaintiff Marilyn Ellman ("Ellman") has filed a six-count :third-amended complaint against her employer, Woodstock #200 School District ("the school district"). Count I is a state law claim of age discrimination based on the Illinois Human Rights Act ("IHRA"), 775 ILCS 5/1-101 et seq., Count II is a claim of sex discrimination based on Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq., and the IHRA, Count III is a retaliation claim based on Title VII and the IHRA, and Count V is a state law breach of contract claim.[1]

Currently pending before the court are the parties' cross-motions for summary judgment, filed pursuant to Fed.R.Civ.P. 56 [2]

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1. Per Order dated June 12, 2000, this court dismissed Count IV (a state law claim for breach of the implied covenant of good faith and fair dealing) and Count VI (an "involuntary servitude" claim based on the Thirteenth Amendment), pursuant to the school district's Fed.R.Civ.P. 12(b)(6) motion.

2. The school district has called its motion a motion for summary judgment or in the alternative a motion to dismiss for failure to state a claim. Because materials were submitted in support of the motion, the court will consider the motion in its entirety as a motion for summary judgment filed pursuant to Rule 56.

and the school district's motion to strike. The court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367, 42 U.S.C. 20OOe-5(f)(3), and venue is proper as the complained of actions occurred in this district and division, see 29 U.S.C. § 1391.

II. Preliminary Matters

At the outset, the court notes that Ellman has failed to file a statement responding to each numbered paragraph in the school district's LR56.1(a) (formerly LR12M) statement of facts, supporting any disagreement with specific references to the record. LR56.1(b)(3)(A); Bordelon v. Chicago Sch. Reform Bd. of Trustees, 233 F.3d 524, 527 (7t' Cir..2000). Thus, all material facts set forth in the school district's statement are deemed admitted. Bordelon, 233 F.3d at 527.

Ellman argues she is acting pro se and should be extended latitude in complying with the procedural rules. The court rejects this argument for several reasons. First, the school district *in writing* specifically informed Ellman of her obligations under LR56.1. (Def. Mem. Supp. Summ. J.) Second, Ellman is no stranger to litigation. See, e.g., Ellman v. Lisle Bd. of Educ., No. 88 C 2247, 1989 WL 157328 (N.D. Ill. Dec. 14, 1989) (Conlon, J.); Ellman v. Hentges., No. 96 C 50217, aff'd, 165

Appendix C; Continuing

F.3d 31 (7" Cir. 1998) (unpublished) ; Ellman v. Hentges., No. 99 C 50269 (N.D. Ill.) (Reinhard, J.) (filed August 20, 1999); Ellman v. Harezlak, No. 00 C 50340 (N.D. Ill.) (Reinhard, J.) (filed September 27, 2000). Third, Ellman's pro se status does not relieve her of the burdens of a court's procedural requirements. See Members v. Paige, 140 F.3d 699, 702 (7 th Cir. 1998).

The school district also moves to strike Ellman's statement of material facts because it does not comply with the organizational requirements of LR56.1(a)(3), contains legal arguments and legal conclusions, and does not include specific references to the record. The school district also contends her affidavit attached to her motion for summary judgment fails to comply with Fed.R.Civ.P. 56(e), in that the affidavit contains hearsay, conjecture, speculation and statements about which Ellman has no personal knowledge. The court agrees with the school district in part. Those portions of Ellman's statement of material fact which contain legal arguments and conclusions are stricken. Likewise, those portions that are unsupported by the record will also be stricken, as will be discussed in more detail infra. Regarding Ellman's affidavit, only those statements based on personal knowledge which would be admissible in evidence will be considered at the summary judgment stage. Fed.R.Civ.P. 56(e);

Appendix C: Continuing

Hong v. Children's Memll Hosp., 993 F.2d 1257, 1265 P 1h Cir. 1993), cert. denied, 511 U.S. 1005 (1994).On October 27, 2000, Ellman filed a "Supplementary Affidavit" in support of her motion for summary judgment, and on November 15, 2000, filed a "Second Supplementary Affidavit" in support of her motion. The court finds both of these affidavits are in complete derogation of the rules. Apparently, Ellman is of the impression she can file whatever she wants, whenever she wants. However, Ellman is aware of this court's approach to her practice of filing "supplemental affidavits," based on her experience in previous litigation before this court.. See Ellman v. Hentges, No. 96 C 56217, slip op. at 2-4 n.1 (N.D. Ill. Aug. 29, 1997) (Reinhard, J.).

If allowed, Ellman's nonstop filings would force the court to spend an undue amount of time sorting through an unorganized record, rendering Local Rule 56.1 meaningless. Under the local rules, the court is entitled to limit its analysis of the facts on summary judgment to evidence that is properly identified and supported in the parties' statements. Bordelon, 233 F.3d at 529. Thus, the court will disregard both the "supplementary affidavit" and the "second supplementary affidavit." See id.

Appendix C; Continuing

III. Facts-3

Ellman works as a school psychologist for the school district. (LR56.1 (a) P 1) She started working for the school district for the 1988-89 school year and at the time of her hire, was fifty-one years old. (Id. P 2) During Ellman 's entire employment at the school district, she has never been terminated, suspended, demoted, received a less distinguished job title, had a salary decrease, or lost any benefits. (Ld. P 3)

She has been a member of a union during her employment with the school district and has been subject to a collective bargaining agreement ("Agreement") between the school district and union. (Id. P 4) The Agreement addresses the issue of covered employees' salaries, which includes Ellman, based on a salary schedule reflecting an employee's education, graduate credits, and years of experience. The Agreement does not provide for overtime, and provides that the normal school day includes before and after school professional responsibilities. (Id. (PP 5, 8) The Agreement also has a binding arbitration clause. (Id. P 41) Under this clause, if an employee covered by the Agreement believes the school district has violated the Agreement, the

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3. References to LR56.1(a) in this section are to the school district's statement of facts. References to LR56.1(a) in section IV(B) infra, wherein Ellman 's motion for partial summary judgment is discussed, are to Ellman 's statement of facts.

Appendix C; Continuing

employee must file a grievance; if the grievance is not resolved satisfactorily, it is submitted to arbitration. (Id.)

Ellman receives a letter at the beginning of each school year indicating her salary for that year. The job description for Ellman 's position includes actively participating in staffings and special education conferences. (Ld. 11 10) Special education conferences can be scheduled before, during, or after students are dismissed from their respective buildings to accommodate parents' schedules. (Id. P 11)

From the 1997-98 school year to the present, the school district has employed three full-time psychologists, all of whom are female: Ellman (d/o/b June 10, 1 937), Ann Braasch (d/o/b May 23, 1943), and Dianne Wise (d/o/b January 25, 1960), although Wise no longer works for the school district. (Id. 11 12-15) From 1996 until the present, Ellman 's yearly salary has consistently been higher than that of both Braasch and Wise. (.Id.) Neither Ellman, Wise, nor Braasch receive overtime pay for doing work considered to be within the school psychologist job description. (Id. P 16)

Throughout Ellman 's employment with the school district, she received performance evaluations in accordance with Article IV of the Agreement. (Id. 1 19) On July 14, 1994, Ellman requested clarification from her supervisors regarding her job responsibilities. In response, her supervisors wrote a document

entitled, "Criteria for Successful Performance 1994-95," which she perceived to be a negative evaluation. (Id. 1 20; Hentges Aff., 1 16, Exh. 4) At the beginning of the 1995-96 school year, the school district and union agreed that the school district would not use this document for Ellman's evaluations and to delete any references to it. (LR56.1(a) 1 21; Hentges Aff., Exh.1 6 Exh. 5) The document has never been used again to evaluate Ellman's job performance. (LR56.1(a) P21, Hentges Aff., P16) In Ellman's 1998-99 performance evaluation, she received positive comments in the formative appraisal and was rated either "excellent' or 'satisfactory' in all categories of the summative evaluation (LR56.1(a) P23, Hentges Aff., Exh. 6) Ellman's 1998-1999 evaluation was conducted using the same procedure and format as for all other certified staff and applying the same performance criteria used for all ancillary personnel, which includes psychologists (LR56.1(a) P24)

In the 1997-98 school year, Ellman split her time between the Westwood Early Learning Center ("Westwood") and the Woodstock High School (""Woodstock"). Westwood's principal assigned Ellman to use a custodian storage room. However, Ellman objected and as a result, shared her old office with the other psychologists. (Pl. dep., p. 129) Thus, she never used the custodian storage room as her office at Westwood. (LR56.1(a) 1 25; Pl. dep., p. 130) The following year, the early learning center was moved out

Appendix C; Continuing

of Westwood to another school, and was renamed the Verda Dierzen Early Learning Center (""Verda Dierzen"). (Pl. dep., p. 130) Ellman worked at Verda Dierzen one day per week. (Id. P. 133) There, she was assigned and used an interior library office; on the days she did not work at Verda Dierzen, another psychologist shared the same office. (LR56.1(a) !1 26) After she complained about how small the library office was, she was moved to a conference room which had previously been used as the principal's office. (Id.; Pl. dep., pp. 133-34, 137) She used the library office for one or two months before being moved into the conference room. (LR56.1(a) P 27)

Ellman also complained about her room assignment at Woodstock, Room 226. She complained about no windows, uncontrolled heating units, no ventilation, loose ceiling tiles, problems with the fan, and asbestos. (Id. P 28) Her complaints were brought to the attention of Bruce Lane, the Assistant Principal, and Will Sivertsen, the Director of Buildings and Grounds. (Id.) Either Lane or Sivertsen took steps to investigate, address, and fix her complaints. (Id. P 29) In a memo dated October 8, 1997, Lane summarized Ellman's complaints about Room 226 and explained what the staff had done to address her concerns. (Def. Exh. 14)

For some of Ellman 's complaints, such as the lack of windows, there were no solutions. Lane noted that the other

three classrooms and one office area in the vicinity also lacked windows. (Id.) He also noted the heating and ventilation system was the same for the other classrooms and office in that area. (Id.) As for Ellman 's asbestos concerns, the school informed her of the asbestos management plan on file at the office of the Director of Buildings and Grounds, and ordered air quality tests to be performed in Room 226.[4] (LR56.1(a) Exh. 15, 16) In a memo dated November 6, 1997, Sivertsen notified Ellman the air quality testing showed all readings for total dust and respirable dust were well below the permissible exposure limits set by law. (LR56.1(a) 1 31, Exh. 16) After her complaints, she was assigned another room. (LR56.1(a) 1 32)

Ellman has filed one grievance for the 1997-98 through 1999-2000 school years. (.Ld. P 4 2) The grievance, filed in October 1997, concerns a memo Dr. Ravitz wrote about Ellman missing several meetings and failing to fulfill her professional responsibilities. (Id.; Ravitz Aff., 1 7, Exh. 12) As a result of the grievance, Dr. Ravitz modified the memo; neither Ellman nor the union have pursued the grievance to arbitration. (LR56.1(a) P 42)

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4. According to Sivertsen 's memo to Ellman, the environmental company which prepared the management plan certified there was no "friable asbestos containing material" (as defined by state regulations) located in the ceiling or ceiling tile in Ellman 's part of the building. (LR56.1(a) P 30, Exh. 15)

Appendix C; Continuing

IV. Analysis

A Sumnary Judment Standard

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). The question to be determined is whether, if the record of the summary judgment proceeding were were the record at trial, a reasonable fact finder could find in favor the party. Tobey v. Extel/JWP, Inc., 985 F.2d 330, 332 (7t' Cir. 1993). When the parties file cross-motions for summary judgment, the court construes all inferences in favor of the party against whom the motion under consideration is made. Wilson v. Chrysler Corp., 172 F. 3d 500, 511 (7t' Cir. 1999) However, conclusory allegations will not win the day. Miller v. Borden, Inc., 168 F.3d 308, 312 (7 th Cir. 1999). Intent and credibility are crucial issues in employment discrimination cases and, therefore, the summary judgment standard is applied with rigor in such cases, but summary judgment will not be defeated just because motive or intent are involved. Id. (citations omitted).

Appendix C; Continuing

B Ellman's Motion for Partial Summary Judgment

At the outset, it should be noted Ellman's "Fact" section in her motion for partial summary judgment contains no cites to any portion of the record and appears to be, by and large, a repeat of the allegations in her complaint. it is well-settled that at the summary judgment stage, Ellman must do more than repeat the pleadings, particularly if are not within her personal knowledge, to win her motion. Cf. Shermer v. Illinois Dep't, 171 F.3d 475, 477 (7th Cir. 1999 (nonmovant must do more than merely rest on pleadings to overcome motion for summary judgment). Thus, the court will disregard the "Fact" section of Ellman 's motion for partial summary judgment.

The court's job in analyzing Ellman 's statement of facts has been rendered exceedingly difficult because many of her statements are unsupported by the record and because when Ellman "cites" to the record, she oftentimes simply refers to "exhibits" to one of her affidavits. She has filed many affidavits, two of which have been stricken, and she has filed many "exhibits." A repeated cite is, "see affidavit and supplement to affidavit of Marilyn Ellman." See, e.g., LR56.1(a) PP 3(c), (d), (f). It is not the court's job to take Ellman 's unsupported statements on faith or to scour the record to unearth material factual disputes. Carter v. American Oil Co., 139 F.3d 1158, 1163 (7 th

Cir. 1998). Thus, paragraphs 3(c), (d), and (f) of Ellman 's LR56.1(a) statement are stricken.

In deciphering Ellman 's cites, it becomes apparent that Ellman is relying on her "'supplementary affidavit" and "second supplementary affidavit," both of which have been stricken as discussed in section II above. Thus, paragraphs 3(a), (b) (in part), (e), and (g) of Ellman 's LR56.1(a) statement are stricken. Even if the court were to consider these "affidavits," the record shows Ellman 's "proof" does not support her claims. For example, Ellman claims that younger and male employees are paid for after school meetings-, while she is not. (LR56.1(b) 9[3(a)) In claiming this, Ellman lists a host of employees who purportedly received extra pay, and has submitted a slew of documents regarding payroll information, including W-2 statements. None of these documents are supported with proper foundation and, lacking such foundation, tell the court nothing as to whether younger and/or male employees were paid for after school meetings while she was not. (The remainder of her exhibits suffer from the same defects.)

Ellman also claims, without any cite to anything in the record, that Bev Alfeld, Apollonia Reckamp, and Inez Petersen were forced to retire and/or leave the district. (LR56.1(a) 11 4) Likewise, Ellman claims Eugene Schaefer and Don Deller are male employees over age sixty who were not coerced to retire. (Id. P

5) These statements are unsupported by the record and the court
will disregard them.

In short, Ellman has proffered no admissible evidence to support her assertion that she is entitled to summary judgment on any of her claims. Ellman's motion for summary judgment is denied.

C. The School District's Motion for Summary Judgment

1. Issue and Claim Preclusion

The crux of Ellman 's suit appears to center on the following complaints:

- the school district assigned Ellman to a custodian's storage room to be used as her office;

- the school district assigned her to a substandard classroom at Woodstock;

- the school district required Ellman to work overtime without compensation;

- the school district has harassed and threatened Ellman with unwarranted discipline;

- the school district continues to apply the "Criteria for Successful Performance 1994-95" to her performance evaluations; and, on two occasions the school district failed to notify Ellman that school was canceled due to inclement weather. (Compl. PP 13-18)

Appendix C; Continuing

Under res judicata (now commonly referred to as claim preclusion), a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. Montana v. United States, 440 U.S. 147, 153 (1979); People Who Care v. Rockford Bd. of Educ., 68 F.3d 172, 177 (7 th Cir. 1995). Under collateral estoppel (now commonly referred to as issue preclusion), once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. Montana, 440 U.S. at 153; Adair v. Sherman, 230 F.3d 890, 893 (7t' Cir. 2000).

The court finds Ellman is collaterally estopped from pursuing her claim that defendants discriminatorily continue to apply the "Criteria for Successful Performance 1994-95" to her performance evaluations. In Ellman v. Hentges, No. 96 C 50217 (N.D. Ill. filed July 5, 1996) (Reinhard, J.), aff'd, 165 F.3d 31 (7 th Cir. 1998) (unpublished) *(available at* 1998 WL 560754), Ellman sued Hentges and the school district, alleging the defendants discriminated against her because of her age, in violation of the ADEA, and retaliated against her for opposing their unlawful employment practices. Hentges, No. 96 C 50217,

slip op. at l. [5] In granting the defendants' motion for summary judgment, this court rejected Ellman 's complaints regarding a remediation plan the school district applied to her during the 1994-95 school year. Hentges, slip op. at 5-6, 14. This court held the evaluation did not constitute an adverse employment action under the ADEA. Id. at 14.

Thus, the "Criteria for Successful Performance 1994-95" about which Ellman complains here was at issue in Hentges. The issue was actually litigated, as reflected by the court's analysis in granting defendants' motion for summary . Judgment in Hentges, wherein the court determined that the evaluation did not constitute an adverse employment action. This finding, in turn, was essential to this court's ultimate holding that defendants did not violate the ADEA. Finally, both Ellman and the school district were parties in the prior action.[6]

Ellman argues the school district has continued to impermissibly use the 1994-95 evaluation and that this continued

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5. This court's unpublished opinion granting defendants' motion for summary judgment in Hentges is attached as an exhibit to the school district's statement of material facts in this case.

6. Issue preclusion, rather than claim preclusion, applies to Count II, Ellman 's sex discrimination claim, because the court in Hentges was analyzing the remediation plan in the context of the ADEA. The court does not reach the issue of whether issue or claim preclusion apply to Ellman's alleged IHRA violation in Count !, as it is being dismissed on another ground, to be discussed infra.

use gives rise to a new claim which has not been litigated. The problem with this argument is Ellman 's complete lack of proof.[7] In fact, she admits the "Criteria for Successful Performance 1994-95" document has never been used again to evaluate her job performance. (LR56.1(a) 1 21, Hentges Aff., 1 16) Her 1998-99 performance evaluation was conducted using the same procedure and format as for other psychologists, and she received a positive evaluation for the 1998-99 school year. (LR56.1(a) 11 23-24, Hentges Aff., Exh. 6)

The court also finds Ellman is collaterally estopped from arguing she is entitled to overtime pay. This court in Hentges addressed Ellman 's claims regarding overtime, and found them to be wholly lacking. Hentges, slip op. at 17-18. This court found there was no evidence Ellman was entitled to overtime pay, and stated she is employed on an annual salary basis, and the collective bargaining agreement is silent on the issue. Id. at 10-11. Thus, Ellman 's overtime claim here was involved in Hentges, was actually litigated, a determination of the issue was essential to a finding that defendants did not violate the ADEA, and both Ellman and the school district were in the prior action.

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7. Even if the court were to consider Ellman 's "supplementary affidavit" and "second supplementary affidavit," no evidence exists therein to support Ellman 's bald assertion that the school district continues to use the 1994-95 evaluation.

Appendix C; Continuing

2. Count I - The Illinois Human Rights Act

In Count I, Ellman bases her age discrimination claim on the IHRA. (Compl. PP 12(a), 21) The school district argues Ellman 's claim is barred because she failed to exhaust her administrative remedies under the IHRA, and the court agrees. Courts do not have jurisdiction to hear independent actions for civil rights violations under the IHRA. 775 ILCS 5/8-111(C); Mein v. Masonite Corp., 485 N.E.2d 312, 315 (Ill. 1985); see also Talley v. Washington Inventory Serv., 37 F.3d 310, 312-13 (7 th Cir. 1994). Rather, judicial review for an alleged violation of the IHRA is available only after the Illinois Human Rights Commission ("IHRC") has issued a final order on a complaint. Flaherty v. Gas Research Inst., 31 F.3d 451, 458 (7 1h Cir. 1994); Talley, 37 F.3d. at 312-13; Rotter v. Brinker Rest. Corp., No. 98 C 50256, 1999 WL 33148742 (N.D. Ill. Sept. 3, 1999) (Reinhard, J.). Ellman never brought her IHRA claim to the IHRC and, therefore, failed to exhaust her administrative remedies. McCraven v. City of Chicago, 18 F. Supp. 2d 877, 882 (N.D. Ill. 1998).

Moreover, Ellman 's EEOC Right to Sue Notice does not serve as a substitute for a final order from the IHRC. Rotter, 1999 WL 33148742, at *1; see also Zamani v. American Dental Ass'n, No. 98 C 1022, 1998 WL 812545, at *3 (N.D. Ill. Nov. 18, 1998); Moore v. Jewel Food Stores, Inc., No. 97 C 6501, 1998 WL 102629, at *4 (N.D. Ill. Mar. 3, 1998). The IHRC' s workshare agreement with

the EEOC does not alter the IHRC's exclusive jurisdiction over the IHRA. Zamani, 1998 WL 812545, at *3. To hold otherwise would allow Ellman to easily circumvent the IHRA's comprehensive scheme of remedies and administrative procedures, a result the Illinois legislature did not intend. Rotter, 1999 WL 33148742, at *3; Moore, 1998 WL 102639, at *4. Thus, the school district's motion is granted as to Count 1.[8]

3. Count II - Sex Discrimination Based On Title VII

Excluding those complaints the court has found Ellman is collaterally estopped from pursuing, Ellman's Title VII sex discrimination claim is based on the following conduct: (1) the school district assigned her to a custodian's storage room to be used as her office; (2) the school district assigned her to a substandard classroom at Woodstock; (3) the school district has harassed and threatened Ellman with unwarranted discipline; and, (4) on two occasions the school district failed to notify Ellman that school was canceled due to inclement weather.

Ellman has produced no direct evidence of sex discrimination. Therefore, the court will analyze her claims under the indirect, McDonnell Douglas burden-shifting test. Simpson v. Borg-Warner Auto., Inc., 196 F.3d 873, 876 (7 th Cir. 1999). Thus, Ellman must show: (1) she is a member of a

8. The court's holding also applies to Ellman 's sex discrimination and retaliation claims brought pursuant to the IHRA in Counts II and III. (Compl. PP 28, 37)

Appendix C; Continuing

Protected class; (2) she was meeting the school district's legitimate expectations; (3) she suffered an adverse employment action; and, (4) the school district treated similarly situated, non-protected employees more favorably. Id. If Ellman establishes a prima facie case, the school district must articulate a legitimate, non-discriminatory reason for the adverse employment decision. Id. Ellman may then present evidence from which a reasonable fact finder could conclude the school district's proffered reason was pretextual. Id.

Ellman has not successfully established a prima facie case of sex discrimination with respect to any of her claims for the simple reason that none of her complaints rise to the level of an adverse employment action. For an employment action to be considered adverse within the meaning of Title VII, the employee must suffer a materially adverse change in the terms and conditions of her employment that is more disruptive than a mere inconvenience or alteration of job responsibilities. Stockett v. Muncie Ind. Transit Sys., 221 F.3d 997, 1001 (7 th Cir. 2000); Bell v. EPA, 232 F.3d 546, 555 (7 th Cir. 2000). As this court explained to Ellman in Hentges, slip op. at 13, "'not everything that makes an employee unhappy is an actionable adverse action.'" (quoting Smart v. Ball State Univ., 89 F.3d 437, 441 (7th Cir . 1996)). The action must constitute a significant change in employment status, such as hiring, firing, failing to promote,

reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Burlington Indus., Inc. v. Ellerth, 542 U.S. 742, 761 (1998).

None of Ellman's room assignments amount to an adverse employment action within the meaning of Title VII. Ellman admits that after she complained about her room assignment at Westwood, she never actually used the ""custodian storage room." Instead, she shared her former office with other psychologists. As for the library room to which Ellman was assigned at Verda Dierzen, she claims it was too small and lacked privacy. While Ellman may have felt the area was too smal.1, there is no evidence it was at the level of a "'dingy closet" rendering her wholly incapable of doing her job. See Place v. Abbott Lab., 215 F.3d 803, 810 (7th Cir. 2000), cert. denied, U.S. _, 121 S. Ct. 768 (2001). On the contrary, the space was big enough for a table, two student chairs, two adult chairs, and cabinets and shelves for storage space. (LR56.1(a) 9[26) Another school psychologist shared the same office and used it on days Ellman was not there. (Id.) Regardless, after only one or two months, Ellman was transferred to a conference room which had previously served as a principal's office. Obviously, this was an acceptable substitute. As for Woodstock, Ellman 's room, Room 226, was similar to a number of other classrooms and an office in the same area. In fact, Room 226 was used as a classroom with room for up

Appendix C; Continuing

to ten students plus a teacher for four years without complaint. (LR56.1(a) 1 28) School officials addressed Ellman 's concerns and ultimately transferred her to another office.

These facts show none of the room assignments at issue materially adversely changed the terms and conditions of her employment. At most, Ellman was unhappy about her room assignments but, as stated above, this does not constitute an adverse employment action.

As for Ellman 's claim that the school district has harassed and threatened her with unwarranted discipline, apparently this claim is based on two incidents. First, Dr. Ravitz wrote a memo in October' 1997 about Ellman missing several meetings and failing to fulfill her professional responsibilities. (LR56.1(a) 11 34) The union grieved the memo and Dr. Ravitz modified it. Ellman, however, was not disciplined. (Id.) Second, a school administrator had a discussion with Ellman in August 1997 regarding her refusal to work with other psychologists in scheduling available working space at Westwood. (Ld. 1 35) Again, however, Ellman was not disciplined as a result of this incident. (Id.) These two incidents, which did not result in a suspension or loss of pay, or were even considered discipline, do not constitute adverse employment actions under Title VII. Likewise, Ellman 's complaint that the school district failed to call her on two occasions about snow days, although inconvenient,

also does not rise to the level of an adverse employment action. The school district's motion is granted with respect to Count II.

4. Count III - Retaliation Under Title VII

In Count III, Ellman alleges she was retaliated against for filing charges of discrimination. Title VII prohibits an employer from retaliating against an employee who makes a charge of discrimination. 42 U.S.C. § 20OOe-3(a). In keeping with the McDonnell Douglas burden-shifting approach, Ellman must initially establish a prima facie case of retaliation. Oest v. Illinois Dep't of Corr.., _ F.3d _, 2001 WL 122111, at *10 (7t' Cir. Feb. 14, 2001). To do so, Ellman must show: (1) she engaged in protected activity; (2) she suffered an adverse employment action subsequent to the protected activity; and (3) a causal connection exists between the adverse employment action and her participation in the protected activity. Id. Construing Ellman 's claim broadly, it appears all of the behavior which supports her Title VII sex discrimination claim also forms the basis of her retaliation claim in Count III. Thus, Ellman 's Title VII retaliation claim fails for the same reason as her Title VII sex discrimination claim - she has failed to show she suffered an adverse employment action. The school district's motion is granted with respect to Count III.

Appendix C; Continuing

5. Count V - Breach of Contract

In her Complaint, Ellman alleges she and the school district were parties to a written employment contract. (Compl. P 51) Ellman alleges the school district breached the contract "both in spirit and as written" by subjecting her to work without compensation, by subjecting her to different standards than other employees, and by discriminating against her due to her age and sex. (Id.) The school district argues Ellman 's state law breach of contract claim is preempted by the IHRA, relying on Geise v. Phoenix Co. of Chicago, Inc., 639 N.E.2d 1273 (Ill. 1994).

In Maksimovic v. Tsogalis, 687 N.E.2d 21 (Ill. 1997), Illinois Supreme Court, in clarifying its holding in Geise, stated that whether a court may exercise jurisdiction over a state law claim depends on whether the claim is inextricably linked to a civil rights violation such that there is no independent basis for the action apart from the IHRA itself. Here, Ellman alleges she was subjected to different standards than other employees and was discriminated against because of her age and sex. These claims are inextricably linked to the IHRA because without a violation of the Act, there is no breach of contract claim. Thus, these claims are preempted by the IHRA. See Wootten v. Fortune Brands, Inc., No. 98 C 4603, 1999 WL 705763, at *2-3 (N.D. Ill. Aug. 27, 1999) (breach of contract claim based on promise of harassment-free environment

inextricably linked to alleged civil rights violation and preempted by IHRA, but remaining two breach of contract claims, based on an alleged breach of a termination policy and employer's promise to thoroughly investigate harassment claims were not preempted). Ellman 's claim that she was forced to work without compensation, however, is not inextricably linked to an alleged civil rights violation because the court need not examine whether the IHRA was violated to determine whether a contract has been breached. See id. at *3. However, her claim based on compensation fails for another reason: this is simply her unpaid overtime claim cloaked in another form. As discussed in section IV(C)(1) above, she is collaterally estopped from pursuing this claim. Thus, the school district's motion is granted as to Count V.

V. Conclusion

For the reasons set forth above, the school district's motion to strike is granted in part and denied in part. Ellman 's Rule 56 motion for summary judgment is denied. The school district's Rule 56 motion for summary judgment is granted. This cause is hereby dismissed in its entirety.

ENTER

"sPhillip G. Reinhard".
Phillip G. Reinhard, Judge
United States District Court
Dated: "sFebruary 26, 2001"

Appendix D

United States District Court, Northern District of Illinois

CASE NUMBER: 99 C 50017

Philip G. Reinhard, Judge

DATE 8/22/2001

99 C 50017

Ellman vs. Woodstock #200 School District

MOTION:
DOCKET ENTRY:

(10) For the reasons stated on the reverse, defendant's motion for attorneys 'fees and costs is granted in part. Defendant is to submit a revised request within 14 days after receipt of this order; plaintiff is to respond within 7 days.

"s Philip G. Reinhard".

Appendix D; Continuing

ORDER

On February 26, 2001, the court granted defendant Woodstock #200 School District's ("the School District") Rule 56 motion for summary judgment and dismissed the cause in its entirety. Plaintiff Marilyn Ellman appealed this decision, which is currently pending. On May 25, 2001, 88 days after entry of judgment, the School District filed a motion for attorneys' fees under 42 U.S.C. § 20OOe-5(k), Fed.R.Civ.P.54(d)(2),and R54.3 and for related non-taxable costs under Fed.R.Civ.P. 54(d)(1).

Ellman initially argues the School District's motion is untimely because it was not filed within 14 days after entry of judgment, in accordance with Federal Rule of Civil Procedure 54. The School District argues Rule 54 must be read in conjunction with Local Rule 54, and it timely filed its motion within Local Rule 54(b)'s 90-day deadline. The School District is correct. Federal Rule of Civil Procedure 54(d)(2)(B) states, " [u] nless otherwise provided by statute or *order of the court,* the motion must be filed and served no later .than 14 days after entry of judgment[.J]" (emphasis added). Local Rule 54.3(b) states, "[e]ither before or after the entry of judgment the court may enter an order with respect to the filing of a fee pursuant to Fed.R.Civ.P.54. Unless the court's order includes a different schedule for such filing, the motion shall be filed in accordance with the provisions of this rule and shall be filed and served no later than 90 days after the entry of the judgment ... on which the motion is founded. "Indiana's Local Rule 54. 1 is identical, and the Seventh Circuit has held the local rule was an order of court which served to modify Fed. R. Civ. P. 54's 14-day filing deadline. See Johnson v. Lafayette Fire Fighters Ass'n Local 472, 51

F.3d 726, 728-29 (7'" Cir. 1995). Thus, the School District's petition was timely filed.[1]

Regarding its request for attorneys' fees, the School District argues Ellman 's claims were frivolous, unreasonable and without foundation so as to meet the prevailing defendant standard under Title VII See Christiansburg Garmet Co. v. EEOC, 434 U.S. 412 (1978); Munson v. Milwaukee Bd. of Sch. Dir., 969 F.2d 266, 269 (7flCir. 1992). The court agrees with the School District in part. Of the discrimination and retaliation complaints which formed the crux of Ellman 's lawsuit here, see Order dated Feb. 26, 2001, at p. 13, Ellman had previously litigated two identical complaints in Ellman v. Hentges, No. 96 C 50217 (N.D. Ill. filed July 5, 1996) (Reinhard, J.), aff'd, 165 F. 3d 31 (7" Cir. 1998) (unpublished). These claims were meritless because Ellman fully litigated them in Hentges. Moreover, Ellman 's decision to repeatedly litigate issues is disturbing in the sense that she appears to ignore those court directives with which she disagrees, resulting in needless work for a court with an overcrowded docket. For example, Ellman was warned in the Hentges

[1] Ellman also claims the School District did not comply with LR 54.3(d)(4) in that it did not supply her with the relevant information within 21 days after judgment was entered. This is not true. The School District's submissions show it supplied its time and work records to Ellman via overnight delivery on March 16, 200 1. (Def. Exh. 1). This was within 21 days of judgment.

case to stop filing materials without permission, yet did the same thing in this case. See Order dated Feb. 26, 2001, at p.4. While the remainder of Ellman' s sex discrimination and retaliation claims come close to the line of meritless (none of them rose to the level of constituting an adverse employment action under Title VII), the meaning of adverse employment action involves a legal interpretation, of which lay people maybe unaware. However, as the court has twice admonished Ellman, not every action the School District takes which causes her to be unhappy should be the subject of a **federal lawsuit, and Ellman would do** well to keep this in mind in the future.

Thus, Ellman is required to pay $254.70 in non-taxable costs as expenses, an amount she has never contested. Of the $25,357.50 the School District seeks in attorneys' fees, it is to submit, within 14 days after receipt of this order, documentation showing what portion of those fees were the result of the two **claims Ellman had** already fully litigated in Hentges. (See Order dated Feb. 26, 2001, at pp. 13-16). Ellman is given 7 days to respond.

The School District's request for an injunction barring Ellman from filing any more lawsuits against the School District and its employees without permission from the court is denied.

Appendix E

United States District Court, Northern District of Illinois

Philip G. Reinhard, Judge

CASE NUMBER 99 C 50017

10/1/2001
Ellman vs. Woodstock #200 School District

DOCKET ENTRY:
(10 For the reasons stated on the reverse Memorandum Opinion and Order, defendant is awarded $925.00 in attorneys' fees. This is in addition to the $254.70 plaintiff was previously ordered to pay in non-taxable costs as expenses.

"s/Philp G. Reinhard".

MEMORANDUM OPINION AND ORDER

On August 22, 2001, the court granted defendant's motion for attorneys, fees and costs in part, finding defendant was a prevailing defendant, see Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978); Munson v. Milwaukee Bd. of Sch. Dir., 969 F.2d 266, 269 (7th Cir. 1992), with respect to two of plaintiff's claims. The court found plaintiff's frivolous claims were based on two complaints she had previously litigated: defendant's failure to pay her overtime, and an allegedly discriminatory 1994-95 performance review. In response to the court's order, defendant submitted a revised petition for attorneys'

fees, requesting a total of $6,841.58. Defendant divided the fees into two categories: , (1) $925 in fees specifically described in its attorneys' bills as dealing with the claims found to be frivolous; and, (2) $5,916.58 in fees which are a percentage of the total fees generated in preparing its motion for summary judgment.

A prevailing plaintiff who has been successful with some claims but not all may recover attorneys' fees related to the successful claims. Hensley v. Eckerhart,. 461 U.S. 424, 433-35 (1983) ; see also Farrar v. Hobby, 506 U.S. 103 (1992). This rule applies with equal force to prevailing defendants. See Hensley, 461 U.S. at 435 n.10. The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rate. Id. at 437. Although an attorney is not required to record in great detail how each minute of his time was expended, the records must provide a proper basis for determining how much time was spent on particular claims. Id. at 437 n.12.

The billing records attached to defendant's supplemental response show the requested $925 in fees are directly related to plaintiff's overtime and/or 1994-95 performance evaluation claims. The entries, for example, refer to payroll documents, payroll records or special education conferences (which relate to plaintiff's overtime claim because she was complaining she had to attend such conferences without being paid overtime). Thus, defendant has satisfied its burden with respect to these fees.

However, defendant has not satisfied its burden with respect to the more general fees relating to its motion for summary judgment. Although defendant has attempted

to prorate the fees in a fair and equitable manner, the overtime and performance evaluation claims were part of plaintiff's overall discrimination and/or retaliation claims. See Hensley, 461 U.S. at 435. Defendant would have filed its summary judgment motion regardless of these claims, and it is difficult to determine what portion of its time and efforts were directed solely to the frivolous claims. See id. The majority of the work relating to the frivolous claims would have been of a factual nature (which is reflected in Denise McCracken's entries totaling $925), rather than of a legal nature, such as that involved in drafting defendant's motion for summary judgment. The court did not declare the majority of plaintiff's claims to be frivolous (although they were borderline) , and the amount of $925 accurately and proportionately accounts for that portion of the litigation which was frivolous, unreasonable and without foundation. See Farrar, 506 U.S. at 114-15.

Plaintiff has not contested the number of hours spent or the hourly rate, and the court finds both to be reasonable. Thus, defendant is awarded $925 in attorneys' fees.

Appendix F:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS WESTERN DIVISION

Marilyn 1. Ellman,

v. Plaintiff,

WOODSTOCK #200 SCHOOL DISTRICT,

Defendant.

Case No. 99C50017

Judge Philip G. Reinhard

Magistrate P. Michael Mahoney

Filed June 21, 1999

MOTION FOR CHANGE OF VENUE

Marilyn Ellman, Plaintiff, brings forth her motion to request a change of Venue to the Eastern Division: Everett McKinley Dirksen United States Courthouse in Chicago, Illinois 60604.

Appendix F; Continuing

Rene Hernandez, Attorney stated several times to me that I was not liked by Judge Reinhard and that my case would always be dismissed before trial.

It is impossible for me to obtain a replacement attorney on a contingency basis in the Rockford area. All of the Chicago lawyers I contacted refused my case because of its location, but may reconsider if I obtain a change of venue to the Dirkson building.

"s Marilyn Ellman".

Marilyn Ellman, Plaintiff

Appendix G

i

United States District Court, Northern District of Illinois

Philip G. Reinhard, Judge

Date: July 12, 1999

99 C 50017

ELLMAN vs. WOODSTOCK#200 SCHOOL DISTRICT

DOCKET ENTRY:

(10) For the reasons stated on the reverse, plaintiff's motion for change of venue is denied.

"sPhilip G. Reinhard".

ORDER

Plaintiff, Marilyn 1. Ellman, has filed a pro se motion for change of venue which requests her case be transferred to the Eastern Division because her former attorney told her she was "not liked" by this court and her case would be dismissed before trial. Plaintiff has failed to meet the timely filing of the motion or the sufficient affidavit requirements if the motion is intended under 28 U.S.C. § 144.

Nor has plaintiff shown any basis for disqualification under 28 U.S.C. ; 455 as prior judicial rulings are insufficient to support disqualification, and her former attorney's alleged statement does not show extra-judicial conduct, or a deep seated favoritism or antagonism that would make fair judgment impossible. See Liteky v. United States, 510 U.S.540 (1994). Should the motion also be one intended as a change of venue to the Eastern Division under 28 U. S.C ; 1404 because she cannot find a lawyer in Rockford (Western Division), there is no showing for transfer for the convenience of the parties, witnesses, or in the interest of justice, Concrete Structures of the Midwest v. TRECO Constr. Serv., Inc., 95 C 50211, 1996 WL 67213 (N.D. Ill. Feb. 16, 1996), even if plaintiff, who filed the action here can now bring a motion to transfer venue.

Appendix H

United States' Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 5, 2002
Nos. 01-1779 and 01-3777

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

MARILYN I. ELLMAN,
Plaintiff-Appellant,
v.
WOODSTOCK #200 SCHOOL DISTRICT,
Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Western Division.

No. 99 C 50017

Philip G. Reinhard, Judge

Upon consideration of the MOTION TO SUSPEND APPEAL TO ALLOW ELLMAN TO FILE AN EXTRAORDINARY WRIT TO THE SUPREME COURT OF THE UNITED STATES FOR DIRECTION, filed on February 26, 2002, by the pro se appellant,

IT IS ORDERED that the motion is DENIED.